Legal systems in the modern Middle East and North Africa are both diverse and hybrid. This article provides an introductory overview that summarizes the multilayered legal history of this region and discusses how imperialism and colonialism shaped legal reform movements, codification, and the secularization of law.

Introduction

The common phrase/name ‘Middle East and North Africa’ (MENA) combines political and geographical categories. The ‘Middle East’ is a problematic political (rather than geographical) category; in comparison, ‘North Africa’ is a useful geographic category. While the more geographically descriptive (and less geopolitically constructed) term ‘Southwest Asia’ (or ‘Western Asia’) is preferable, it is not in widespread use. The ‘Middle East’ is an ambiguous, shifting, and modern (specifically, beginning in the twentieth century) category, having historically been preceded by the term ‘Near East’ (a term disseminated through British colonialism). Indeed, “The Middle East exists because the West has possessed sufficient power to give the idea substance. In this regard the colonial past and imperial present are parts of the equation that make the Middle East real” (Gasper, 2012: p. 240). Consequently, this article will focus on the modern period and modern nation-states. States that are often included within the ‘Middle East’ include Armenia, Bahrain, Cyprus, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirates, and Yemen. States that are typically included within ‘North Africa’ include Algeria, Libya, Mauritania, Morocco, Sahrawi Arab Democratic Republic, Somalia, Sudan, and Tunisia. This article will not comprehensively discuss the legal systems of each of these states, but instead offer a broad overview of the region with some detailed attention to the legal systems of some representative states. The acronym MENA will be used throughout this article to refer to the Middle East and North Africa. It should be noted that the MENA region is ethnically, linguistically, and religiously diverse; it cannot be simplified as the Arab or Islamic world.

Pre-Islamic History

Historical evidence that survives from some of the oldest legal systems globally comes from the Near East. Several ancient legal systems operated in the Near East and parts of North Africa, including the laws of Uru Nammu (twenty-second century BCE), Sumerian laws (eighteenth/nineteenth century BCE), laws of Hammurabi (eighteenth century BCE), Middle Assyrian laws (eleventh/twelfth century BCE), and many other legal systems (Jackson, 2008: pp. 37–44). In North Africa, Berber and Roman legal traditions were practiced for centuries. These and other ancient sources indicate a long history of complex legal systems operating in the region.

Islamic History (see Islamic Law)

Islam spread throughout the MENA gradually, over several centuries, as the result of conquests, trade, and assimilation processes. The majority of the region’s inhabitants did not become Muslim until the medieval era (some estimates are between the twelfth and fourteenth centuries, depending on local circumstances). Throughout premodern history, non-Muslims (particularly Christians and Jews) operated their own courts to adjudicate matters of personal status (such as marriage, divorce, and inheritance) for their constituents. Still, non-Muslims frequented state (i.e., Islamic) courts for a variety of legal issues (including personal status). Since its historical beginning, Islamic law has had two overlapping dimensions in the MENA region: the first is the application of Islamic law as a state legal system over all its subjects; the second is the application of Islamic law by private jurists or Muslim associations (unaffiliated or unregulated by a state) over Muslim subjects. The first dimension is discussed in another encyclopedia article, Islamic Law; the second dimension will be mentioned briefly throughout this article.

Imperialism and Legal Reform (Eighteenth to Nineteenth Century)

The imperial era in the MENA region began in approximately 1798, with the Napoleonic invasion of Egypt (Mallat, 2007: p. 132). The people of the MENA region radically altered their legal systems between the eighteenth and twentieth centuries as a result of foreign intervention and internal demands for reform; the two factors cannot be easily distinguished. Legal changes that began during the Ottoman Empire intensified after its disintegration, the establishment of colonial regimes, and the later founding of quasi-independent nation-states. These legal changes primarily resulted in the emulation of the legal systems of European states, particularly in terms of juristic training, court procedures, and jurisprudential methodologies.

Tanzimat (reorganization) is the term used to describe a period of reform in the Ottoman Empire that is typically dated as beginning with the Hatt‡  Şerif of Gülhane (Imperial Edict of the Rose Chamber, known as the Gülhane Rescript)
of 1839 and ending with the Reform Edicts of 1856, but can be extended to describe legal changes beyond that date. The Gülhane Rescript confirmed the civil and economic rights of all Ottoman subjects, while confirming Islamic law as the source of Ottoman law; it is perceived as symbolizing Ottoman plurality because it erased legal status differences between Muslims and non-Muslims. In 1847, the Ottomans established courts with both European and Ottoman judges, applying a combination of European and Ottoman laws and procedures. Several codes were promulgated in this period that largely adopted European (especially French) codes: in 1850, a commercial code; in 1858, land and penal codes; in 1861, another commercial code; and in 1863, a maritime code. These Ottoman codes were based on French law and were implemented by state courts (nizamiyye). In addition to the enactment of codes (primarily instigated by European demands), Ottoman courts adopted European procedural rules and created special courts to adjudicate cases for Europeans. After 1869, the Ottoman Empire followed a civil code known as the Mecelle-i Ahkâm-i Adliye (hereinafter, the Ottoman civil code), which included both Islamic legal principles and a variety of Islamic substantive and procedural laws, but was structured like the French Civil code. These modifications in the Ottoman legal system created a demand for jurists trained in these new codes and European-influenced legal procedures, resulting in the undermining of traditionally trained jurists.

Imperialist intervention in the legal systems of the region is most evident in the capitulatory system that was imposed upon the Ottoman Empire. European governments had placed significant pressure on the Ottoman Empire to provide their consuls with jurisdiction over all legal issues involving Europeans — and their affiliates, who included non-Muslim subjects of the Ottoman Empire — doing business in the Ottomam Empire. By the end of the eighteenth century, European capitulatory privileges were significantly affecting Ottoman markets as commercial dealings were effectively governed by external, foreign powers. Foreign legal jurisdiction in Ottoman Turkey did not end until the 1923 Treaty of Lausanne ratified the independence of Turkey.

Colonialism, Codification, and Modernity (Twentieth to Twenty-First Century)

The post–World War I division of the Ottoman Empire by the British and French created the modern nation-states that are now identified as MENA states. The 1916 Sykes-Picot agreement divided most of the areas previously under Ottoman rule into British and French colonies. Colonial administrators composed handbooks or legal guides for the MENA region throughout the nineteenth century; these texts shaped how colonized subjects viewed law in general and Islamic law in particular. Each newly formed state in the MENA region pursued an individualized path to establishing a state-based legal system that simultaneously reflects both the state’s particular circumstances and broader trends of Westernizing law to meet global financial and political pressures. After the dissolution of the Ottoman Empire, the independent state of Turkey began a process of ‘secularizing’ its legal system through the adoption of European codes.

ʿAbd al-Razzāq al-Sanhūrī (d. 1971) spearheaded the codification of Egyptian civil laws in 1948, by fusing French and Egyptian legal norms. Sanhūrī was the most influential legal reformer in the Middle East in the twentieth century. A more comprehensive Egyptian Civil Code was promulgated in 1949 and it encompassed all civil legal matters, except personal status; it was based on a variety of civil codes from other countries and Islamic legal traditions. Many Arab states adopted Sanhūrī’s codification with little or no modification. Egypt’s civil code was replicated in Syria in 1951, in Iraq in 1953, and in Jordan in 1976. In 1951, Sanhūrī himself became involved in drafting Iraq’s Civil Code, which, according to some scholars, contains more Islamic norms than its Egyptian predecessor. The introduction of legal codes throughout the region was met with little popular resistance, probably because most states divided jurisdiction between Islamic and civil courts – with the former handling the kinds of domestic cases that affected the broadest population base. There was significant scholarly discussion and commentary on, and explanation of these codes by contemporaneous jurists. In North Africa, French-inspired civil codes were the norm, with Islamic law influencing (although not necessarily dictating) family law codes.

The independent postcolonial nation-states that emerged in the MENA region implemented legal systems primarily based on Western legal systems. However, since most (if not all) of the states in the region were authoritarian, one should be cautious in drawing conclusions about the operation of law in isolation from the political context. Indeed, some observers have noted that the authoritarianism and military conflicts prevalent in the region puts into question the efficacy of the rule of law.

Colonizing Property Law, Liberalizing the Economy

In the nineteenth and twentieth centuries, land became increasingly privatized in the region as part of an extensive process of integration in the global capitalist economy. In the early nineteenth century, a series of legal decrees were enacted to facilitate the transfer and privatization of property. The Ottoman Land Code (1858) identified five types of property: (1) privately owned land; (2) state-owned land under private administration; (3) charitable-endowed trusts; (4) public land under preservation; and (5) land beyond the boundaries of inhabited areas. Regulations for each property type were designed to facilitate transfer and privatization of property. Other local land laws modified the prevailing conditions of land ownership. In order to control property in Algeria, the French waged a campaign against lands held in trust that entailed attacking the Islamic legal tradition of endowments (awsalaq) (Powers, 1989). Western scholarly attention to Islamic trusts and laws regulating private property in the modern MENA reflect a wide-ranging interest in the history of global capitalism; unfortunately, some of this scholarly interest legitimates a problematic assumption of the incompatibility between Islamic law and modern financial structures (or economic progress in general) (Salaymeh, 2014). In the twentieth century, imperialist pressures on law reform in the region are evident in a variety of commercial laws (foreign investment, banking, taxation, employment, intellectual
property, and taxation) designed to integrate the MENA into the ‘global economy’ (Lapidus and Salaymeh, 2014).

Colonizing Family Law, Liberalizing Society

The long history of Western intervention in the legal systems of present-day MENA nation-states makes family law a battleground for far-reaching political issues. Colonial officers throughout the MENA region directed much criticism to the organization of families. In response, some local legal professionals sought to emulate Western personal status laws, while others rejected Western models. Enacted in 1917, the Ottoman law of family rights included a broad array of legal opinions from majority, minority, and extinct Islamic legal schools and was the first ‘modern’ family law code, applied throughout the empire. Turkey replaced the code with secular reforms in the 1920s. Other former Ottoman provinces replaced it with national family law codes – such as in Jordan (1951) and Syria (1953). Personal status codes were enacted throughout the region in quick succession: Tunisia (1956), Morocco (1958), and Iraq (1959). While these modern laws primarily codified Islamic legal norms, they also imposed the state’s bureaucratic apparatus by requiring court involvement or registration of all marriages and divorces. In Egypt, the 1897 code for Islamic courts made written registration of marriage, divorce, and inheritance incumbent; this was confirmed by a later law requiring official documents for all family law matters after 1911. These procedural rules had substantive outcomes, since the courts were thereby able to implement a variety of previously informal or unenforced restrictions – such as a minimum age for marriage.

Marriage and divorce laws are the principal sites of contestation between groups that are erroneously labeled as ‘conservative’ and ‘reformist/liberal’; this label oversimplifies the complex stakes that animate why individuals or groups advocate for particular laws. What underlies conflicts about family law is the sociopolitical reality of neoimperialism: many people in the MENA region view Westernized legal ‘reforms’ as a type of foreign intervention and therefore view rejection of Western legal norms as a form of resistance (Salaymeh, 2014; Lapidus and Salaymeh, 2014).

Islamicizing Constitutions in the MENA Regions

There is a broad spectrum of constitutional recognition of Islamic law in the MENA. Turkey declared itself a secular state in 1937, after removing constitutional reference to Islam as the state religion in 1928. Syria’s 1973 constitution does not identify a state religion. After the 1979 revolution, the Iranian Constitution made Islamic law the highest source of legal authority and made Iranian jurists an integral part of the government. Based on its own determination of Islamic suitability, the Iranian Council of Guardians (comprising 12 jurists) is responsible for interpreting the Iranian Constitution, has the ability to overrule any legislation, and can prevent candidates from participating in political elections. Pakistan declared Islamic law as more authoritative than its own constitution in 1991. To understand what these constitutional references (or lack of references) to Islamic law mean or how they operate, it is essential to examine actual case law. All states in the region incorporate a hybrid of secular and religious laws and institutions. Most states apply Islamic law in distinct ways and generalizations cannot be made about the role of Islamic law in a particular modern nation-state based on the text of its constitution.

Most importantly, the overt religious/secular characteristics or structures of states do not necessarily shape the substance of a state’s legal system. In contemporary political discourse, demands for the inclusion of Islamic law in the constitutions of nation-states with Muslim majority populations has become commonplace. This rhetoric must be understood within its complicated sociopolitical context: continued foreign intervention, undemocratic regimes, and limited social and economic mobility. Popular Islamist movements pose a serious threat to essentially secular, autocratic regimes. Moreover, the term Islamic law means different things to different people and is often a symbolic – rather than substantive – demand. Typically, demands for the enforcement of Islamic law are simply demands that particular orthodox or historical Islamic laws – particularly in the areas of family and criminal law – be applied. The integration of Islamic law in the legal systems of modern nation-states has a minimal impact on the daily operation of law because the preponderance of legal matters (in civil and commercial matters) is governed by ‘secular’ laws.

Brief Legal Histories and Summaries of Select States

The following descriptions of the legal systems in certain MENA states focus on national legal systems, without delineating an individual state’s international treaties or ratification of international agreements. Most MENA states have adopted civil legal codes, with some inclusion of Islamic law – particularly in the areas of personal status. The majority of these states have extensive and continuously updated laws concerning commercial activities, civil and criminal procedure, banking, property, taxation, and environmental protection that are not delineated here. Commercial laws in the region are essentially consistent with global practices, which are dictated by the strongest economies (mostly Western states) and designed to meet the demands of foreign investors and workers. Generally, labor laws – especially for foreign workers – are weak and employees have limited legal protections from exploitation. It should be noted that many states in the region recently enacted antiterrorism laws (modeled after those implemented in Western states) that function not as a form of crime prevention, but as a restraint on dissidents with Islamist political leanings. These legal synopses are not intended to be exhaustive in their presentation of the breadth of these legal systems.

Algeria

France colonized Algeria in 1830, beginning more than 30 years of French intervention in Algerian law – epitomized by the ‘Droit Musulman-Algérien,’ which was a fusion of French and Islamic laws. (Similarly, Anglo-Muhammadan law was a combination of British and Islamic laws that British judges applied to Muslims until 1947.) France imposed a hierarchical court system and a draft code (Code Morand of 1916) that
Europeanized Islamic laws; the Code Morand was a ‘modern’ interpretation of Islamic legal principles that was very influential on Algerian law.


Bahrain

Bahrain gained independence from Britain in 1971 and its legal system fuses civil law (from the Egyptian civil code) and common law (from English laws of contracts) (Al Baharna, 1994: p. 332). Bahrain’s criminal procedure code (1966), penal code (1976), and various commercial codes constitute the bulk of the state’s laws. Bahrain’s 1973 constitution gives a Council of Ministers and the Amir (or King) the authority to issue legislation. A consultative council was established in 1992 to provide legislative support and offer advice to the government (Al Baharna, 1994: p. 333). The constitution was replaced in 2002 with a new constitution declaring that the state of Bahrain would be named the Kingdom of Bahrain and issuing a series of laws (Al Baharna, 2001–2002). Bahrain’s judicial hierarchy includes the Supreme Court of Appeal (established in 1989), the High Court of Appeal, the High Court, and the lower courts (Al Baharna, 1994: p. 335). The Bahraini uprising that began in 2011 demands a representative form of government and protection of basic human rights.

Egypt

Modern European (particularly French) civil law codes were integrated into the legal system of the Egyptian state in the nineteenth century. New legal codes (civil, commercial, maritime, criminal, and procedural) promulgated in 1875 combined the Code Napoléon and Islamic legal sources. Mixed courts were established in 1875 to adjudicate matters between Egyptians and foreign nationals on the basis of these codes; they continued to operate until 1949. Similarly, based on European models, National Courts and national codes were established in 1883. Egypt’s Civil Courts have a structured hierarchy of appeals: two categories of the Courts of First Instance, Courts of Appeal, and the Civil Chamber (Kosheri, 1994: p. 125). The Egyptian government began training judges for its new Islamic courts in 1907. Egypt’s Islamic courts were integrated into the National Courts in 1956.

One of the better known modern legal reformers was ‘Abd al-Razzaq al-Sanhūrī (d. 1971), discussed above, who led the drafting of the Egyptian Civil Code (1948/9) and the Iraqi Code (1951) and participated in the drafting of codes for neighboring states (including Iraq, Syria, Jordan, Kuwait, and Libya). Sanhūrī earned two doctorates from the University of Lyon, was dean of both an Egyptian and an Iraqi law school, and held several government positions. Sanhūrī sought to modernize Islamic law and to develop a modern legal system that would benefit from comparative study of Western legal systems, but emphasize Islamic values.

Egypt’s 1971 Constitution established a Supreme Constitutional Court (SCC) and an independent judiciary. (Amendments to the Egyptian constitution were enacted in 2007.) The SCC hears cases through referrals from lower courts (criminal, civil, or administrative) and its decisions are irrevocable. In response to popular demands, the Egyptian Constitution was amended in 1980 to identify Islamic law as ‘the’ (rather than ‘a’) primary source of Egyptian legislation. The 2011 Egyptian Constitutional Declaration identified the principles of Islamic law as the principle source of legislation. In the Egyptian legal system, substantive Islamic law is most influential in family law. For example, in 2000, Egypt enacted a law facilitating wife-initiated divorce that was challenged as an unconstitutional violation of Islamic law; the SCC upheld the law, noting that there are valid Islamic legal opinions validating such divorces (Riad and Gabr, 2002–2003: pp. 181–194). While non-Muslims (primarily Copts) are governed by non-Islamic laws of marriage and divorce, they are subject to Islamic inheritance rules. Egypt’s family laws of 1920 and 1929 were updated in 1985 (Kosheri, 1994: pp. 139–140). Islamic law does not appear to have much influence on Egypt’s Penal Code.

A number of business-friendly laws were passed in the 1970s and 1980s to encourage investment in line with global capitalist trends. Law No. 203 (in 1991) initiated a slow process of privatization, supported by laws that reorganized the banking system (Kosheri, 1994: pp. 130–131). Further liberalization of Egypt’s economy was instituted through Law No. 38 (in 1994), which deals with foreign currency and exchange (Kosheri, 1994: p. 133). Egypt’s 1952 revolution had resulted in redistribution of land; a series of laws were passed in the 1990s that reflected broader liberalization efforts on the part of the Egyptian government (Kosheri, 1994: p. 139). Egypt’s 2011 revolution and 2013 military coup have created an uncertain future for the rule of law in the state.

Iran

Modern Iran was ruled by a monarchy until the 1979 revolution, which established the Islamic Republic. The establishment of an Islamist government did not immediately alter the legal landscape of the country; specifically, some legal codes predate the revolution, including the Civil Code (1928–35) and the Commercial Code (1932). The Iranian Constitution (1979; amended and ratified in 1989) gives jurists – whether the supreme leader or the Council of Guardians – prominent roles in the state’s law-making, including judicial review. The Iranian Parliament drafts laws that are reviewed by the Council of Guardians (Ansari-Pour, 1994: p. 385). In 1989, Iran created a council to mediate between the Council of Guardians and Parliament, in an effort to resolve an impasse between jurists and legislators. The Council of Ministers also drafts laws that are sent to Parliament (Ansari-Pour, 1994: p. 386). While the Ismāʿīlī school is the official source of law, other Islamic and non-Islamic laws are recognized by the state. Iran’s 1911

Iraq

Iraq’s 1925 Constitution confirmed its monarchy and established a legislature, but Iraq did not become independent of British rule until 1932. The 1958 revolution established a republic and the Iraqi Constitution was modified repeatedly (in 1943, 1958, 1963, 1965, and 1970) (Al-Mukhtar, 1994: p. 158). In addition to the executive, judicial, and legislative branches, the Constitution enumerates the duties of the Revolutionary Command Council, which had supreme authority in the country. Iraq’s judiciary includes civil, criminal, family, and special courts; the Court of Cassation is the highest Iraqi court (Al-Mukhtar, 1994: p. 160). Iraq’s Civil Code was promulgated in 1951, under the direction of Egyptian jurist ʿAbd al-Razzaq al-Sanhūrī, and reportedly contained more Islamic legal principles than its Egyptian counterpart (Al-Mukhtar, 1994: p. 163). Civil procedure, evidence, commercial law, banking law, and employment law correspond to European civil legal systems or other Arab legal systems. Family law was governed by the 1959 personal status law and is applied to all Iraqi Muslims; Iraqi Christians, Jews, and other confessional groups have their own personal status laws that are applied in the civil courts.

Iraq issued a series of new laws and modified existing ones in the period prior to its occupation of Kuwait (Al-Mukhtar, 1994: p. 171). As a result of the United States–led invasion of Iraq in 1991 and its occupation in 2003 (which ostensibly ended in 2011), the country’s legal system was effectively destroyed. Iraq’s current constitution (2005) was drafted by a council (some of whose members were not Iraqi) appointed by the United States and other forces occupying Iraq at the time (the ‘Coalition Provisional Authority’). The constitution has been criticized by many Iraqis for emphasizing sectarian and ethnic identity over national unity.

Jordan

Jordan achieved independence from Britain in 1946, but English law is primarily influential in arbitration law. French law influenced Jordan’s civil and commercial laws. Like many other states in the region, family law is based on Islamic legal traditions. Jordan’s Constitution dates to 1952, but was amended in 1984. Civil and criminal matters are handled by regular courts (First Instance, Courts of Appeal, and Court of Cassation); religious courts (Islamic and Christian) handle personal status matters; there are also military and administrative courts (Haddad, 1994: p. 178). Jordan’s 1953 land law permitted the transformation of state-owned land to private ownership in specific situations. A 2006 antiterrorism law expanded the jurisdiction of the Jordanian state security court (Haddad, 2005–2006: p. 290). In 2010–11, a number of legal reforms – including the establishment of a constitutional court – were enacted to heed off a potential uprising (Haddad, 2010–2011: p. 209).

Kuwait

Kuwait was under British control between 1914 and 1961, but its legal system is based on Ottoman and Islamic laws, rather than British common law. In 1962, Kuwait enacted a constitution that identifies Islam as the state religion. Kuwait’s civil code is based on the Egyptian civil code (since it was drafted by the Egyptian jurist, Sanhūrī). Kuwaiti judges sometimes defer to Egyptian precedents (Kassim, 1994: p. 254). Kuwait promulgated several codes in 1960 (criminal, criminal procedure, and commercial companies), 1964 (commercial agencies and labor), and 1980 (commercial, civil and commercial procedures, and maritime commercial) (Kassim, 1994: p. 255). The judiciary includes the Court of First Instance, the Court of Appeals, and the Court of Cassation. Kuwait’s civil code (1980) was intentionally designed to incorporate legal opinions from multiple Islamic legal schools. The only tax in Kuwait is applied to corporate income (Kassim, 1994: p. 271).

Lebanon

Lebanon was under French colonial rule from 1920 (when the Ottoman Empire dissolved) to 1943. Its legal system is primarily based on the French civil law system, beginning with the Code of Obligations and Contracts (1932). Civil, commercial, and criminal courts are overseen by the Court of Cassation, whereas the Conseil d’Etat oversees administrative law. Nearly 20 distinct confessional systems (Islamic and Christian sects, as well as Judaism) govern family law; however, inheritance is a matter of civil law, not subject to religious courts. Ten legal professionals sit on Lebanon’s Constitutional Council, which was founded in 1989 (Mallat, 1994: pp. 204–205). The rule of law disintegrated during the Lebanese civil war (1975–90); in its aftermath, Lebanon promulgated several laws relating to property, taxation, and estates to deal with gaps and non-functionality in the existing laws (Mallat, 1994: pp. 214–217). Reflecting the implications of a prolonged and chaotic civil war, Lebanon passed a law in 1995 that declares as dead any individual who had gone missing for more than 4 years; this law was implemented to facilitate inheritance cases (Mallat, 1994: p. 217). The complexity of asserting the rule of law in Lebanon is evident in the uneven application of criminal proceedings against individuals who committed actionable crimes during the war; many individuals directly involved in warfare became part of the state’s administration after the war (Mallat, 1994: p. 219).

Libya

Libya’s civil legal system is based on the French and Egyptian civil codes. The first article of Libya’s civil code identifies the state’s legal sources as legislation, Islamic legal principles, custom, and natural law or equity (El-Alem, 1994: p. 225). Libya’s judicial hierarchy includes a Supreme Court, appellate courts, and first instance courts (El-Alem, 1994: p. 226). The Libyan Constitution gives Basic Popular Conferences legislative authority (El-Alem, 1994: p. 227). Civil and commercial procedures are governed by a 1954 code; in 1994, popular tribunals, a new type of court, were introduced.
Saudi Arabia

Saudi Arabia is an absolute monarchy, which means that the monarch has ultimate authority. Saudi rules of civil procedure were issued in 1936 and 1952; the Ministry of Justice was established in 1970 and it issues Islamic legal decrees on a variety of issues (Abrahams, 1994: pp. 275–276). In 1992, Saudi Arabia passed its Basic Law, which is modeled after a constitution, although the first article identifies the Qur’an as the state’s constitution (Mallat, 2007: p. 160). An ‘Islamic’ procedural law was enacted in 2000 and was the first systematization of legal procedures in the kingdom (Hejailan, 2000–2001: p. 271). A Supreme Court and a Supreme Judicial Council were both established in 2007 (Dhalan and Zedan, 2008–2009: p. 339). While in theory Islamic law is the main source of law, regional and international laws have been integrated into the Saudi legal system. Saudi courts do not publish court decisions; prior to the 1980s, however, the decisions of courts of equity were reported (Mallat, 1998: p. 118). Commercial regulations, often influenced by Egyptian or Western practices, are promulgated by the Council of Ministers (Abrahams, 1994: p. 274). Islamic courts hear cases involving family, criminal, property, and personal injury matters (Abrahams, 1994: p. 277). The Board of Grievances (established in 1955) deals with claims against the government (Abrahams, 1994: p. 278). Saudi business law has developed to deal with the large numbers of foreign investors and foreign professionals working in the country. While only citizens may be qualified to practice law, foreign attorneys often function as legal consultants to members of the Saudi bar.

Syria

Syria became independent from French colonial rule in 1946, at which time the state issued several legal codes that were modeled after Lebanese or Egyptian codes. Syria’s 1973 Constitution gives the People’s Assembly and the President shared legislative power (El-Hakim, 1994: pp. 142–143). Many commercial laws were enacted in the mid-twentieth century to encourage foreign investment, tourism, and banking operations. Syria’s labor laws require employer-provided social insurance. Personal status matters are handled by Islamic and other confessional courts. Civil and criminal courts are subject to appeal. Syria has three lower criminal courts (police, first degree, and court of criminal appeal). The Superior Judicial Council appoints judges and oversees lower courts. The Higher Constitutional Court deals with the constitutionality of laws (El-Hakim, 1994: p. 153). In 2011, the Syrian government issued a new constitution making broad legal changes; it was ‘approved’ in 2012; the country is in the midst of a civil war (El-Hakim and Harding, 2010–2011: p. 179).

Sudan

Sudan’s legal system combines English common law, Islamic law, and customary law. Britain established a system of dual courts in the country, with ‘secular’ courts handling civil and criminal matters and Islamic courts handling the family law matters of Muslims (Safwat, 1994: p. 237). Islamic law was
integrated into the operation of all courts through the Judicial Decision Sources Act (1983), Civil Procedure Act (1983), Evidence Act (1983), Civil Transactions Act (1984), and Penal Code (1991). Most of these laws also identified the importance of custom to Sudanese law (Safwat, 1994: p. 238). Sudan’s judiciary includes a Supreme Court, courts of appeal, provincial courts, district courts, town benches, and other courts (Safwat, 1994: p. 239). A personal status code was issued in 1991 for Muslims, integrating legal opinions from the Hanafi and Malikî schools (Safwat, 1994: p. 250). Some parts of the Sudanese penal code that were based on Islamic law were not applied in Southern Sudan (which became independent in 2011) (Safwat, 1994: p. 253). The 1990 National Security Act gives the government broad authority to detain citizens without formal charges. Sudan’s 1998 constitution identified the state as Islamic, created a constitutional court, and made numerous other legal changes (Makec, 1997–1998; p. 308). A new constitution was adopted in 2005.

**Tunisia**

Tunisia achieved independence from France in 1956 and adopted a constitution in 1959 (Gaigi, 1994: p. 419). Initially applicable to Muslims only, the personal status code (1956) was extended to all Tunisian citizens in 1957 (Gaigi, 1994: p. 420). The Tunisian legal system includes several codes, including civil and commercial procedure (1959), commercial (1959), and criminal procedure (1968, revised 1993) (Gaigi, 1994: p. 420). Tunisia’s personal status code (1956), which has been revised repeatedly, is based on Islamic law with many modifications; it has been the subject of extensive analysis and commentary (Gaigi, 1994: p. 423). The Tunisian uprising began in 2010 and the Tunisian Constituent Assembly recently issued a new constitution.

**Turkey**

Turkey became a republic in 1923; in 1926, the state adopted the Swiss Civil Code (replacing the Ottoman civil code), when it was approved by the Grand National Assembly, after years of lobbying by Atatürk (Mallat, 1998: p. 114). Turkey’s penal code (1926), civil procedure code (1927), and criminal procedure code (1929) were all modeled after European codes (Dogru, 1995: p. 285). Turkey’s current constitution (1982, amendments through 2008) replaced several earlier constitutions and was ratified under a military government that came to power by a coup d’état in 1980; the Constitutional Court reviews the constitutionality of laws passed by parliament after military rule ended in 1983 (Dogru, 1995: p. 287). Turkey’s constitution does not identify Islamic law as a source of law.

**United Arab Emirates**

The United Arab Emirates (UAE) was established as a federation of seven emirates in 1971–72 and has a Supreme Council that is responsible for approving laws and international agreements; essentially, it has a form of monarchical governance. While its constitution identifies Islamic law as the principal source of law, Egyptian codes, English common law, and local customs are influential (Price, 1994: p. 303). The Council of Ministers drafts laws that are then sent, in succession, to the National Assembly and the Supreme Council for approval (Price, 1994: p. 305). Civil (1987), penal (1987), and commercial (1993) codes demarcate much of the daily operation of law in the UAE. The UAE’s civil code incorporates a few Islamic legal principles that were cited in the Ottoman civil code (Price, 1994: p. 305). The judicial hierarchy includes the Court of Cassation, the Court of Appeal, the Court of First Instance, as well as criminal and Islamic courts (Price, 1994: p. 304). In terms of the application of Islamic law, UAE courts give more legal weight to the opinions of the Malikî and Hanbali schools (Price, 1994: p. 303). Although only citizens may be qualified to practice law, foreign attorneys often function as legal consultants to members of the UAE bar. In 1994, the UAE promulgated an extensive Commercial Code; as a member of the Arab Gulf Corporation Council (founded in 1981), the UAE enacts economic laws that are in line with the regional goals of Arab Gulf States (Price, 1994: p. 305).

**Yemen**

The modern republic of Yemen was created with the unification of North and South Yemen in 1990. Yemen’s 1994 Constitution identifies Islamic law as the primary source of law; Yemen’s civil code elaborates that Islamic law, customary practices, and principles of equity are the main sources of law (Shamiri, 1994: p. 369). Laws are promulgated by the parliament, executive decrees, and resolutions of various ministers, all of which are published in Yemen’s official legal journal (Shamiri, 1994: p. 370). Yemen’s judicial hierarchy includes a Supreme Court, a court of appeal, and a court of first instance (Shamiri, 1994: pp. 371–372). The Yemeni Civil Code (1992) codifies many Islamic legal principles (Shamiri, 1994: p. 378). Personal status matters and criminal punishments are governed by Islamic law. In 1997, Yemen initiated a judicial reform program and established a government institution for issuing Islamic legal decrees (dar al-ifta) (Shamiri, 1997–1998: pp. 390–395). Yemen established a national security organization to deal with political threats against the state in 2003 (Shamiri, 2002–2003: pp. 315–317). The Yemeni uprising began in 2011 and it is unclear what legal changes will emerge as a result of this ongoing political transformation.

**Conclusion**

The modern history of the MENA region is characterized by recurring shifts between direct colonial occupation and indirect imperialist interventions. The complexity of this ongoing imperial situation shapes the rule of law and provokes the contours of legal debates that superficially (and incorrectly) pit tradition against modernity, religion against secularism, Islamic law against national legal systems; what underlies these debates is not a struggle between these false bipolarities, but a battle for autonomy, cultural dignity, and popular representation. Internal disputes about law in the MENA region reflect broader
controversies over the distribution of power, economic resources, and social capital. As the region continues to be embroiled in uprisings (Tunisia, Egypt, Syria, Yemen, and Bahrain), military coups (most recently in Egypt in 2013), foreign interventions, and general instability, law functions inconsistently and unpredictably.

Disclaimer
For the benefit of the general reader, references are to source in English.

See also: Constitutionalism, Comparative; Islam: Middle East; Islamic Law; Law: Change and Evolution; Legal Pluralism; Legal Systems, Classification of; Postcolonial Law; Religion: Nationalism and Identity; Secularization; Transnational Religious Identities (Islam, Catholicism, and Judaism): Cultural Concerns.

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Relevant Websites
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